

necessary infrastructure, including base station towers.⁶ SRT acquired its Broadband PCS license in August 2008 from Wirelessco, L.P.⁷ and launched its mobile service in 2010.⁸ In August 2010, the Commission designated Standing Rock Telecommunications, Inc., an eligible telecommunications carrier (ETC)⁹ in part because it concluded that SRT, a Tribal governmental entity, would be particularly well suited to address the needs and interests of the Reservation's local communities.¹⁰

4. *Standing Rock's Network.*¹¹ Standing Rock is authorized under call sign WQJM325 to provide PCS Broadband (CW) service on 20 megahertz of spectrum (1850-1860 MHz and 1930-1940 MHz) on Channel Block A, covering a partitioned portion of the Minneapolis-St. Paul Major Trading Area ("MTA012"), to customers in Corson County, South Dakota and Sioux County, North Dakota. Standing Rock represents that it currently uses 10 megahertz of its 20 MHz PCS license to provide mobile voice and broadband services using High Speed Packet Access ("HSPA") technology. Standing Rock also leases 12 megahertz of 700 MHz spectrum from Infrastructure Networks, Inc.,¹² and provides LTE mobile broadband services using 10 of the 12 megahertz in the same area. Its HSPA network is comprised of 15 macro sites and 2 additional towers for microwave backhaul, and it provides LTE services from 6 of those 15 macro sites.¹³ Standing Rock maintains that it provides services using these networks to approximately 1,600 subscribers on the Reservation (including businesses, schools, public safety officials, and first responders).¹⁴

5. *Renewal Application and Request for Waiver.* The expiration date for call sign WQJM325 and the deadline for filing an application for renewal was June 23, 2015. On March 30, 2015, nearly three months prior to the license expiration date, the Commission's Universal Licensing System ("ULS") issued a courtesy letter reminding Standing Rock of the upcoming license expiration and need for renewal.¹⁵ Standing Rock failed to file its renewal application by the license expiration date, and submitted its renewal application (along with its request for waiver of Sections 1.949(a) and 1.955(a) of the Commission's rules) almost eighteen months after license expiration.

⁶ *SRT 2013 Comments* at 4.

⁷ Standing Rock Telecommunications, Inc. Assignment of Authorization, FCC File No. 0003515253 (filed, Aug. 7, 2008).

⁸ *SRT 2013 Comments* at 4.

⁹ ETCs are common carriers that offer telephone services supported by federal universal support, advertise the availability of such services and the charges for the services using media of general distribution, and that otherwise qualify as eligible telecommunications carriers under the provisions of 47 U.S.C. § 214(e) and in accordance with 47 U.S.C. § 254.

¹⁰ See *Telecommunications Carriers Eligible for Universal Service Support*, Memorandum Opinion and Order, 25 FCC Rcd 12388 (2010) ("2010 SRT ETC Order").

¹¹ Technical information regarding Standing Rock's current operations were provided in its December 2016 *Waiver Request* and via email to Commission staff on June 14, 2018. See E-mail from Greg Whiteaker, Counsel for Standing Rock Telecommunications, Inc. to Thomas Reed, Special Attorney Advisor, Mobility Division, Wireless Telecommunications Bureau, FCC (Jun. 14, 2018, 13:11 EDT) ("Whiteaker E-mail").

¹² Standing Rock submitted its lease notification to the Commission on March 12, 2018. Lease ID L000032305 (Call Sign WQKH489). The Division approved the lease application on September 18, 2018 and the lease expires in June 2019. See FCC File No. 0008129417. We note that information the Commission received from Standing Rock indicates that it has been using 700 MHz spectrum to support its network at least since 2016. See Whiteaker E-mail.

¹³ Whiteaker E-mail at 2.

¹⁴ *Waiver Request* at 1.

¹⁵ Renewal Reminder Notice, ULS Reference No. 5970383 (Mar. 30, 2015). To assist licensees in the renewal process, the Bureau sends a renewal reminder notice to licensees approximately 90 days before the license expiration date. This notice is a courtesy, and non-receipt of this notice by the licensee is not sufficient justification (continued....)

6. In its *Waiver Request*, Standing Rock explains that “[d]ue to numerous changes in management (four different managers in five years), as well as relocation of the Applicant’s offices, the Applicant did not receive notification of the upcoming expiration” and missed the renewal deadline.¹⁶ Standing Rock further explains that “upon learning that the License had expired, Standing Rock immediately acted, working quickly and diligently to engage new counsel for assistance in filing an application for Special Temporary Authority (“STA”) and the instant renewal application and waiver request.”¹⁷ The Commission granted Standing Rock’s initial STA request on December 16, 2016, and the current STA grant expires on May 13, 2019.¹⁸

II. DISCUSSION

7. Under Section 1.949(a) of the Commission’s rules, licensees must file renewal applications no sooner than 90 days prior to expiration and no later than the expiration date of the license.¹⁹ Licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.²⁰ Licensees may, however, file an application for renewal and request a waiver of the filing deadline if the renewal application is not timely filed.

8. The Commission has acknowledged that there may be circumstances when a renewal filing deadline is missed, but the subsequent denial of the renewal application and termination of the license would be too harsh a result in proportion to the nature of the violation.²¹ Accordingly, under the Commission’s policy regarding late-filed renewal applications in wireless services, where a renewal application is filed up to 30 days after the license expiration date, a waiver of the filing deadline and the renewal application will be granted as long as the application is otherwise sufficient under Commission rules, but the licensee may be subject to enforcement action.²²

9. In cases where the renewal application is filed more than 30 days after the license expiration date, however, the waiver request will not be routinely granted, is subject to stricter review, and also may be accompanied by enforcement action.²³ In determining whether to grant a waiver request for renewals filed more than 30 days late, the Commission takes into consideration all of the facts and circumstances involved, including the length in delay of filing, the licensee’s performance record, the reasons for the failure to timely file, and the potential consequences to the public if the license were to terminate.²⁴

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for the licensee’s failure to file a timely renewal application with the Commission. Each licensee is responsible for ensuring its license(s) and license information is kept current.

¹⁶ *Waiver Request* at 1.

¹⁷ *Id.*

¹⁸ Standing Rock requested and was granted an STA under Call Sign WQYR221. See Request for Special Temporary Authority and Waiver by Standing Rock Telecommunications, Inc., FCC File No. 0007593525 (filed, Dec. 14, 2016). The Commission renewed the authorization for Standing Rock’s STA on April 7, 2017 (FCC File No. 0007631976), October 4, 2017 (FCC File No. 0007866657), March 27, 2018 (FCC File No. 0008063388), and again on November 13, 2018 (FCC File No. 0008361601).

¹⁹ 47 CFR § 1.949(a).

²⁰ *Id.* § 1.955(a)(1).

²¹ *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 11476, 11485, para. 22 (1999) (“*ULS MO&O*”).

²² *ULS MO&O*, 14 FCC Rcd at 11485, para. 22.

²³ *Id.*

²⁴ *Id.*

Because Standing Rock filed its pending renewal application nearly eighteen months after call sign WQJM325 expired, its request for a waiver is subject to this stricter level of review. Pursuant to Section 1.925 of the Commission's rules, a waiver may be granted if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁵

10. Standing Rock explains that its long delay in seeking renewal of its license is due to administrative oversight caused by personnel changes and the relocation of its offices. The Commission previously has determined that inadvertent failure to renew a license in a timely manner is clearly not unique or so unusual in and of itself as to warrant a waiver of the Commission's rules.²⁶ In certain cases, however, we have waived the renewal filing deadline: where the licensee demonstrated it attempted in good faith to comply with Commission requirements;²⁷ where the licensee demonstrated that the late-filed application was intended to be part of a larger group of applications that were filed in a timely manner;²⁸ or where dismissal of the renewal application stemmed from a technical problem in ULS beyond the licensee's control.²⁹

11. In this case, Standing Rock does not argue that it attempted in good faith to timely renew its license, and its argument that it inadvertently failed to submit a renewal application in a timely manner due to changes in address and management does not, in and of itself, warrant waiver of the renewal deadline. However, Section 309 of the Act directs the Commission to ensure "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas."³⁰ Under our strict review standard and considering all the facts and circumstances, we find that granting Standing Rock conditional relief is in the public interest. As the Commission previously has recognized, Tribal areas often experience particularly low levels of subscribership because

²⁵ 47 CFR §§ 1.925(b)(3)(i)-(ii).

²⁶ See *Anderson Communications*, Memorandum Opinion and Order, 16 FCC Rcd 15020, 15021, para. 5 (2001); *Peacock's Radio and Wild's Computer Service, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 15016, 15017, para. 5 (2001) (citing *Fresno City and County Housing Authorities*, Order on Reconsideration, 15 FCC Rcd 10998, para. 11 (2000)); *Plumas-Sierra Rural Electric Cooperative*, Order, 15 FCC Rcd 5572, 5575, para. 9 (PSPWD WTB 2000)); Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Elizabeth R. Sachs, Esq., Counsel for G & D Communications, Inc. at 3 (ULS Call Sign WNYV719) (June 30, 2011); Ramona P. Patts, City of Columbus, Ohio, Letter, 25 FCC Rcd 16326, 16327 (BD WTB 2010) ("*City of Columbus Decision*") (citing Ms. Elaine Piccolo, AlarmNet, Inc., Letter, 24 FCC Rcd 11766, 11767-68 (BD WTB 2009) ("*AlarmNet Decision*")); Ms. Janet Tucker, ConocoPhillips Communications Inc., Letter, 24 FCC Rcd 11755, 11756 (BD WTB 2009) ("*ConocoPhillips Decision*").

²⁷ See *DeltaCom, Inc.*, *Applications for Renewal and Requests for Waiver of Filing Deadline*, 27 FCC Rcd 3982, 3986-87, para. 13 (2012) ("*DeltaCom*") (citing Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Mr. Philip Adler, Tuchman & Brown Investments Inc. No. 2 (ULS Call Sign WPQP245) (Dec. 14, 2011); Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Pilot Communications (ULS Call Signs KNKI208 *et al.*) (July 11, 2011); Paging Systems, Inc., Order, 26 FCC Rcd 5913 (MD WTB 2011), *aff'd on reconsideration*, 26 FCC Rcd 16175, 16177, para. 6 (MD WTB 2011); City of Dardanelle Fire Department, Order, 17 FCC Rcd 10901 (PSPWD WTB 2002); Kent H. Sager, Order, 16 FCC Rcd 21353 (CWD WTB 2001); KNTV License, Inc., Order, 16 FCC Rcd 20440 (PSPWD WTB 2001); Navopache Electric Cooperative, Inc., Order, 16 FCC Rcd 11870 (PSPWD WTB 2001); City of Henderson, Nevada, Order, DA 99-2005 at para. 7 (PSPWD WTB 1999). See also James H. Barker, Esq., Cricket Licensee (Reauction), Inc., Letter, 24 FCC Rcd 3298, 3302-03 (MD WTB 2009) ("*Cricket Reauction*") (granting a request for waiver of the deadline for filing a renewal application, in part, where the licensee provided a copy of a "draft" renewal application that was generated in ULS within the 90-day renewal period, but not filed, demonstrating that the licensee intended to retain its license and attempted in good-faith to comply with Commission rules).

of the high cost of service, inadequate telecommunications infrastructure, and a lack of competitive service providers.³¹ In response to these unique hardships, the Commission has embraced a longstanding policy of promoting Tribal self-sufficiency and economic development and helping ensure that Tribes have adequate access to communications services.³² In so doing, the Commission also has recognized how important it is for Tribal governments, like the Standing Rock Sioux Tribal government, to own and operate critical communications infrastructure. Ownership, the Commission concluded when it designated Standing Rock an ETC, empowers “the Standing Rock Sioux Tribe to protect the health and safety of Tribal consumers, to spur local economic development, to preserve Tribal language and culture, and to further the education of consumers through federal distance education programs.”³³ We find that Standing Rock has demonstrated the substantial potential for severe consequences to the public if its sole broadband PCS license is cancelled, and find that granting relief will benefit the Standing Rock Sioux community.

12. The record reflects that Standing Rock launched its mobile service in 2010 and serves a poor, rural, traditionally underserved population (including businesses, schools, public safety officials, and first responders).³⁴ Moreover, Standing Rock asserts that it now provides 4G LTE service from six of its 15 sites.³⁵ We find that a waiver will serve the public interest by facilitating the continued development and deployment of voice and data services to a remote and traditionally underserved community. Moreover, public safety officials on the Reservation depend heavily on Standing Rock’s network. Both the Corson County Sheriff’s Office and the Law Enforcement Department of the United States Department of the Interior, Bureau of Indian Affairs, have written in support of SRT’s waiver application, expressing how

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²⁸ *DeltaCom*, 27 FCC Rcd at 3987-89, paras. 14-16 (citing Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Cheng-Yi Liu, Esq., Counsel to Wave Runner, LLC (ULS File Nos. 0004868550 and 0004868551) (Dec. 14, 2011); Letter from Katherine M. Harris, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau to Tony S. Lee, Esq., Counsel to Nex-Tech, Inc. (ULS File Nos. 0003957435 and 00003957438) (Sept. 9, 2010)).

²⁹ *Compare San Bernard Electric Cooperative, Inc.*, Order on Reconsideration, 17 FCC Rcd 16111 (PSPWD WTB 2002) (granting a request for waiver of the deadline for filing renewal applications after finding that a payment defect relating to the licensee’s initial renewal application was a consequence of a technical problem in ULS beyond the licensee’s control resulting in a screen indicating the applicant had paid a filing fee, even though the payment had not been received; and finding that a printout of the ULS screen indicating that the fee associated with the licensee’s application had been paid corroborated the licensee’s contention that it believed it had paid the fee), *with* Letter from Cyndi Thomas, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau to Mr. Ottis L. Anderson (ULS File Nos. 0003827481, 0003827483, and 0003827484) (Aug. 11, 2011) (rejecting an argument that the licensee had attempted in good faith to file renewal applications based on an unsubstantiated assertion that ULS would not allow the licensee to file renewal applications after the licenses expired).

³⁰ 47 U.S.C. § 309(j).

³¹ *See Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Petitions for Designation as an Eligible*

(continued....)

beneficial and essential SRT's service has been to their day-to-day operations.³⁶ Absent a waiver, affordable access to critical voice (including 911 service for some customers), and data services (including high-speed internet access) could be interrupted for many on the Reservation, including public safety officials and first responders, frustrating a key Commission goal of promoting spectrum access and service to underserved areas.

13. In light of these considerations, we hereby waive the June 23, 2015, filing deadline to renew license WQJM325, grant Standing Rock's December 13, 2016 renewal application, and reinstate WQJM325 subject to the below conditions.

14. *Conditions.* We find it in the public interest to condition the relief granted herein in order to ensure that Standing Rock continues to provide quality voice and data services to its subscribers and that Standing Rock's administrative errors leading to the failure to timely file its broadband PCS license renewal application are not repeated. Failure to comply with these conditions will result in automatic termination of call sign WQJM325.

15. Specifically, as a condition of the relief granted by this Order, we require Standing Rock to maintain critical voice, data, and high-speed internet access services (equal to or greater than its current service parameters) for its subscribers on the Standing Rock Sioux Reservation for a minimum of five (5) years following the effective date of this Order. Standing Rock may elect to continue its current spectrum configuration or deploy under an alternative spectrum plan so long as it does not materially decrease the geographic scope, type (i.e., voice, data, and high-speed internet), or quality of service to its subscribers. Should Standing Rock fail to maintain voice and data services as described herein, for a period of five (5) years following the effective date of this Order, the authorization for call sign WQJM325 terminates automatically. To ensure that Standing Rock continues to provide access to voice and data services to its subscribers, it must demonstrate within three (3) years of the effective date of this Order, and again at five (5) years, that it has maintained or increased the geographic scope, type, and quality of services identified in the instant renewal submissions for the market area defined by call sign WQJM325. Standing Rock shall submit these reports to the Commission as pleadings into the license record via the Universal Licensing System.³⁷

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Telecommunications Carrier and for Related Waivers to Provide Universal Service, Twelfth Report and Order, 15 FCC Rcd 12208, 12220, para. 20 (2000). See also Federal Communications Commission, Connecting America: The National Broadband Plan at 152 (Mar. 16, 2010), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (stating that "[m]any Tribal communities face significant obstacles to the deployment of broadband infrastructure").

³² *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080–81 (2000) ("*Tribal Policy Statement*").

³³ *2010 SRT ETC Order* at 1.

³⁴ Amended Request for Limited Waiver and Extension of Mobility Fund Phase I Public Interest Obligations by Standing Rock Telecommunications, Inc., WC Docket No. 10-90, WT Docket No. 10-208, at 2-3 (filed, Feb. 14, 2018).

³⁵ Whiteaker E-mail at 2.

³⁶ See Testimonial Letter from Rikki Himel, Law Enforcement Assistant, U.S. Dept. of the Interior, Bureau of Indian Affairs (May 30, 2018) (on file in ULS under Call Sign WQJM325); Testimonial Letter from Keith E. Gall, Sheriff, Corson County Sheriff's Office (Aug. 31, 2018) (on file in ULS under Call Sign WQJM325).

³⁷ Currently, such filings can be made in ULS using the following link, <http://wireless.fcc.gov/uls/index.htm?job=home>, under the "Submit a Pleading" quick link. Standing Rock shall also provide a courtesy copy electronically to the Chief of the FCC's Mobility Division, Wireless Telecommunications Bureau.

16. Also, within ninety (90) calendar days of the effective date of this Order, Standing Rock shall develop and implement a Compliance Plan designed to ensure future compliance with the Commission's rules governing license authorizations and renewals. The Plan must contain, but is not limited to, the following features:

- a. Audit. Standing Rock shall complete an audit (e.g., an internal audit) of all radio transmitters used by Standing Rock to determine whether they are authorized and in compliance with the Commission's rules. Specifically, within ninety (90) calendar days of the effective date of this Order, Standing Rock shall submit a report to the Commission listing all radio transmitters in use, how each is authorized, the status of each of its licensed authorizations (i.e., "active," "expired," "cancelled," or "terminated"), and identifying any radio transmitters that are not authorized or not in compliance with Commission rules. As part of this report, Standing Rock shall also submit a plan for the immediate resolution of any reported non-compliance issue as set forth in subparagraph (b) below. This audit report shall be submitted to the Commission as a pleading into the license record via ULS.
- b. Operating Procedures. Within ninety (90) calendar days of the effective date of this Order, Standing Rock shall establish procedures sufficient to ensure future compliance with all applicable Commission legal requirements and licensing regulations, including, but not limited to, procedures for monitoring license expiration dates and deadlines, procedures for monitoring compliance with all regulatory requirements, and procedures for ensuring that Standing Rock will be able to identify and timely report any future instances of noncompliance. These reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Standing Rock has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions were or will be taken; and (iv) the steps that Standing Rock has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Commission as pleadings into the license record via ULS.

17. We caution Standing Rock that licensees remain fully responsible for compliance with applicable Commission rules, including submission of timely renewal and/or lease applications, and we fully expect that Standing Rock will adhere to the Compliance Plan outlined in this Order while maintaining and deploying voice and data services to its subscribers.

III. ORDERING CLAUSES

18. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, that the waiver request filed in association with File No. 0007590123 by Standing Rock Telecommunications, Inc. for call sign WQJM325 on December 13, 2016, IS GRANTED, subject to the conditions set forth herein.

19. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 0.131, 0.331, 1.949, and 1.955 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.949, 1.955, the renewal application, File No. 0007590123, filed by Standing Rock Telecommunications, Inc. for call sign WQJM325 on December 13, 2016, IS GRANTED, and Standing Rock Telecommunications, Inc.'s authorization under call sign WQJM325, is hereby REINSTATED to the extent provided and subject to the conditions set forth herein.

20. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau